

State Notes

TOPICS OF LEGISLATIVE INTEREST

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Federal Election Reform: What it Means for Michigan **by Jessica Runnels, Fiscal Analyst**

On October 29, 2002, Federal election reform legislation was enacted. Contained in the Federal "Help America Vote Act of 2002" (HAVA), are election reform mandates for states and funding levels to implement the reform provisions. While the Act includes authorization for funding, it will not be available until enacted in an appropriation bill. To date, Congress has enacted primarily continuation budgets for fiscal year (FY) 2002-03. Since the FY 2001-02 budget contained no funding for election reforms, the Federal funding authorized in HAVA is not available yet. In the past two years, the State of Michigan has enacted a number of its own election changes, some of which are consistent with this Federal law. The following is an overview of the Help America Vote Act of 2002 and how it affects Michigan's State budget.

HELP AMERICA VOTE ACT OF 2002

The Federal government created a new Election Assistance Commission (EAC) in the Help America Vote Act. The EAC is charged with oversight of the implementation of this Act and is authorized to distribute Federal grants for a number of election purposes, as described below.

Title III Requirements Payments

The Help America Vote Act authorizes \$3 billion for states to implement the requirements set forth in Title III of the Act, which are intended to improve the conduct of Federal elections. Criteria are established for distribution of the funds, called requirements payments. Upon application, a minimum grant is provided for each state and the remainder of the funding is distributed based on a state's share of the national voting age population. According to the Federal Funds Information for States (FFIS), Michigan is eligible for \$93,050,000 over three years. In order to receive this funding, a state must develop a State Plan for implementation of the Act's provisions and must appropriate an amount equal to 5% of the requirements payment. Five percent of Michigan's potential grant is \$4,652,500. A portion of the annual appropriation for election administration may fulfill this obligation, although Michigan appropriated only \$4,105,400 for election administration in FY 2002-03. A description of the requirements payments criteria follows.

Voting System Standards. The Act creates voting system standards that states must implement by January 1, 2006. The voting standards require that voters be allowed an opportunity to correct a ballot error, including the issuance of a replacement ballot. In addition, precinct-based tabulation of ballots is required of voting systems. If the voting system used by a jurisdiction does not have this capability, then the requirement may be satisfied with a voter education program on filling out a ballot. The Act also requires that any voting system used in a Federal election produce a permanent paper record for manual auditing purposes if a recount is necessary.

Each state must set a standard definition of what constitutes a vote for every type of voting system used in that state. The definition must be uniform, nondiscriminatory, and used statewide. The Act reenforces existing Federal statutes regarding error rates of voting systems

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and foreign language accessibility. Each polling place also must have at least one Direct Recording Electronic voting machine or other voting device that enables individuals with disabilities, including visual impairments, to vote privately and independently.

Provisional Voting. The Federal Act that requires provisional ballots be made available to voters. In the new Federal definition of a provisional ballot, a voter signs a written affirmation of registration and eligibility and fills out a ballot, which is forwarded to a state or local election official for a determination of eligibility. If the election official determines that the voter was properly registered, then the ballot is counted. The voter is sent a written statement of whether the ballot was counted or not and why not. States also must develop a free system, such as a toll-free telephone number or Internet site, that voters can use to discover whether their provisional ballot was counted and the reason why if it was not included. Implementation of the provisional ballot procedure must occur by January 1, 2004.

Statewide Voter Registration System. Under the Act, each state must create and maintain a "single, uniform, official, centralized, interactive computerized statewide voter registration list" that is maintained at the state level with access available to any election official in the state by January 1, 2004. The Act requires extensive cross referencing between the voter list and driver and social security records to achieve the most accurate listing of registered voters.

Registration by Mail. The Act institutes a Federal identification requirement for individuals who register by mail. A voter may fulfill the identification requirement by sending a copy of the documentation when the voter registration is mailed, or presenting the identification at the polling place when voting. States must implement this mail registration process before January 1, 2004.

Title I Election Administration Improvement Grants

The Act authorizes \$325,000,000 for general improvements in the administration of Federal elections. Areas of election administration in which states may use the funding include: educating voters concerning voting procedures, voting rights, and voting technology; establishing a toll-free hotline for reporting possible voting fraud and voting rights violations, and providing information on personal voter registration information, polling place locations, and other relevant issues; training election officials, poll workers, and election volunteers; and complying with requirements established in the Act, including development of the State Plan for requirements payments and implementing the new voting technology requirements. According to the FFIS, the State of Michigan could receive \$10,080,000 over three years for general election administration improvements.

Title I Voting Technology Grants

After the 2000 U.S. presidential election and the publicity surrounding the failings of Florida's voting machines, punch card voting systems are seen as outdated and unreliable. Lever machines are no longer manufactured, although some precincts continue to use them. The Act provides \$325 million over three years for states to replace their lever and punch card voting machines. Each state may receive \$4,000 for each qualifying precinct. The grant amount may



be reduced on a pro rata basis if the total amount authorized is insufficient. States have six months from enactment of HAVA to submit a plan for voting technology replacement. Unless the EAC approves an extension, new voting technology purchased under this program must be in place before the Federal general election in November 2004, although the funds may be spent in any fiscal year.

Other Grant Programs

The Help America Vote Act also establishes smaller, specialized grant programs for which states, local units of government, and other eligible entities may apply. A total of \$170,200,000 is authorized for these grants, with \$90,200,000 in the first year. Funding is available for Disability Access, Voting Technology Research, an Equipment Testing Pilot Program, Protection and Advocacy Systems, and the conduct of Student and Parent Mock Elections.

IMPACT ON THE STATE OF MICHIGAN

The Federal Help America Vote Act establishes several election mandates for states. A number of the provisions are already policy for the State of Michigan; however, some changes may be required in state statutes, administrative rules, department policies, and local clerks' offices. In addition, an appropriation of up to \$4,652,500 will be necessary to receive the requirements payment. The exact amount required will depend on how much of the current appropriation may be applied to the state match obligation.

In order to receive a requirements payment, Michigan must submit a State Plan to the newly created Election Assistance Commission outlining how the State will allocate and spend the funding for approved purposes. Many of the voting standards could be implemented by amendments to administrative rules promulgated by the Secretary of State or additional statutory and rule requirements for approval of voting systems for use in the State. The Michigan Election Law and the current administrative rules addressing elections set uniform standards for what constitutes a vote for the voting systems used in Michigan (Chapter 168 of the Michigan Compiled Laws and Rules 168.771-168.793). Statutory changes may be necessary to implement the Federal provisional ballot process.

The two most costly mandates of HAVA are the requirements for placement of at least one Direct Recording Electronic (DRE) machine in each polling place and the creation of a statewide voter registration database. A single DRE voting machine costs approximately \$2,500 for the hardware. Incremental costs for software and central computer linkage would increase the expense. At least 5,376 machines will be required for the State's 5,376 precincts, resulting in a minimum cost of \$13,440,000. However, some precincts have multiple polling places and additional machines will be necessary.

Michigan is ahead of most states on the statewide voter registration database. In 1997, Michigan began implementation of just such a database, called the Qualified Voter File (QVF), which became fully operational in 1999. The QVF is almost identical to the description of the database provided in the Federal Act. A few minor adjustments may be necessary, particularly for the cross referencing of data required by HAVA. The Act allows states to use the funds for

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other election purposes if the Title III requirements have been met. Since Michigan already has implemented a statewide voter registration database, a portion of the requirements payment could be spent on other election issues. For example, Public Act 91 of 2002 requires that any Federal election reform funding be used to implement a uniform, statewide voting system. At the time of enactment, the cost of a uniform, statewide voting system was estimated to be \$26 million to \$53 million.

The State of Michigan may be eligible to receive \$8,544,000 in voting technology replacement funding. The State has 1,443 precincts using punch card voting systems and 693 precincts using lever machines. In Michigan, local jurisdictions are usually responsible for purchasing and maintaining voting equipment, so State revenue from this grant program would need to be coordinated with local clerks to reflect voting system needs at the local level.

CONCLUSION

Election administration in the State of Michigan is highly consistent with the Federal election mandates recently enacted. Federal funding was authorized in the Help America Vote Act, but an appropriation has not yet been made. The statutory and administrative rule changes that Michigan must make to comply with the Act can be completed at no cost to the State. However, acquisition of DRE voting machines and revised procedures and responsibilities in local clerks' offices will require substantial funding. The long-term impact of the Help America Vote Act will depend heavily upon the appropriation of Federal funding.